IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9369 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO. :

2. To be referred to the Reporter or not? : YES
YES

3. Whether Their Lordships wish to see the fair copy of the judgement? NO : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO : NO

5. Whether it is to be circulated to the Civil Judge? : NO
NO

BHAVNAGAR MUNICIPAL CORPORATION

Versus

ANIRUDSINH RAMSINH JADEJA

Appearance:

MR HS MUNSHAW for Petitioner

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/08/1999

ORAL JUDGEMENT

C.A.V. JUDGMENT :-

1. The petitioner-Bhavnagar Municipal Corporation by filing this petition has challenged the award dated 9-12-97, passed by the Presiding Officer, Labour Court, Bhavnagar, in Reference No.66/96, Annexure "A" to the writ petition, and has prayed that the same may be quashed.

2. The brief facts giving rise to this petition are as under :

The petitioner was running Bhavnagar Municipal Transport Service for citizens of the city of Bhavnagar and it had employed regular staff and occasionally daily wagers were also employed and provided work depending upon the requirement. The respondent was provided the work on purely daily wage basis as a Conductor for the first time in January, 1988, and he worked for sixteen days in that month. Thereafter, he worked for twelve days in April 1988 and one day in June, 1988. Thus, he worked in all for twenty nine days with two breaks in between. Since there was no work thereafter, the respondent was not provided any work. However, in the year 1985 the respondent issued a demand notice and thereafter he approached the Labour Court, Bhavnagar, by filing a Reference in 1996 being Reference No.66/96 for reinstatement in service with back wages and consequential benefits.

3. The reference was contested by the petitioner on the ground that the respondent was employed on purely daily wage basis and he was not dismissed and that since no work was available, he was not provided any work nor re-employed as a daily wager. The contention was also taken that the reference was delayed. It was also the case of the petitioner that in June 1996, the transport service rendered by the petitioner was not in operation, hence, the respondent could not be reinstated.

4. The Labour Court repelled these contentions and gave the impugned award. Hence, this writ petition.

5. After hearing the learned counsel for the parties and going through the material on record, it can safely be said that there are various errors apparent on the face of the record as well on the face of the award. Hence, interference of this Court has become imperative.

6. In order to hold that there was non-compliance of Section 25 (F) of the Industrial Disputes Act, it is necessary that the workman should have completed 240 days of work. Learned counsel for the petitioner has rightly contended that in January 1988 the respondent worked as daily wager for sixteen days and then in April 1988 for twelve days and lastly in June, 1988 for one day. The total work done by the respondent thus comes to twenty nine days. This was not continuous work rendered by the respondent. In fact, all daily wage appointments terminate automatically on the very day on which the work

is not provided. If however, the respondent worked for sixteen days in January 1988, it cannot be said that he must continue as a daily wager. There was break and in April 1988 he worked for twelve days. There was further break and in June 1988, he worked for one day. This was established from the documents produced by the petitioner before the Labour Court. Even if the stand of the respondent is taken into consideration, it shows that he worked from 1-1-88 to 16-7-88 continuously. It has been so mentioned by the Labour Court in para 10 of the award. It is also mentioned that the petitioner dismissed the respondent on 16-7-88. Thus, the calculation between the period 1-1-88 to 16-7-88 cannot complete the minimum requirement of 240 days. Even according to the respondent, if this is so, then compliance of Section 25 (F) of the Industrial Disputes Act was not required to be made by the petitioner. Moreover, it was not the case of retrenchment or dismissal of the respondent. Hence, the petitioner was not required to pay any retrenchment compensation or other consequential benefits to the respondent.

7. The aspect of delay was also not considered by the Labour Court. According to the respondent, he was dismissed on 16-7-88. However, it is factually incorrect that he was terminated or dismissed on 16-7-88. In the month of June 1988, he worked for only one day and thereafter it will be deemed that he was ceased to work with the petitioner. For the first time, he gave demand notice in the year 1995 and the reference was made to the Labour Court in the year 1996. Thus, there was a delay of about seven years in serving the demand notice and the delay of eight years in making the reference. Learned counsel for the respondent however placing reliance on the judgment of the Apex Court in Ajaib Singh vs. The Sirhind Cooperative Marketting-cum-Processing Service Society Ltd and another,A.I.R., 1999, S.C., 135, contended that the delay in making the reference is not fatal and at the most the Court can mould the relief by refusing back wages or directing payment of part of back wages. In this case, there was delay of seven years in making the reference. However, the fact remains that the factum of delay was not at all considered by the Labour Court nor it has observed that this delay can be a ground for moulding the relief by refusing to award back wages or directing the payment of part of back wages. On the other hand, the Labour Court in the impugned award has awarded 50 % back wages right from 16-7-88. For these reasons also the award becomes illegal and contrary to law.

8. So far as this Court is concerned, it cannot and need not mould the relief because it was not a case where the respondent completed 240 days of service and his so-called termination can be termed as illegal. Actually there was no termination, dismissal or retrenchment of the respondent. A daily wager who completed only twenty nine days in three months and that too after break, cannot be heard to say that he should be reinstated. The reinstatement of the respondent is not justified on any ground whatsoever.

9. The Labour Court has also ignored the fact that in June 1996 no work existed on which the respondent could be employed as a daily wager. Annexure "C' is the resolution dated 30-5-96, passed by the Transport Committee of the petitioner-corporation deciding for privatization of the transport service of Bhavnagar Municipal Corporation and to hand over all the roads of city buses in the Municipal Corporation to Vividha Transportation Pvt. Ltd, Jamnagar, which is a registered company consisting of ex-military men, subject to the conditions enumerated in the resolution. This resolution was accepted by the State Government vide Annexure "E" on 6/8- 7-1996. If in July 1996 the petitioner was not running its own transport service, the Labour Court could not have forced the petitioner to reengage the respondent on a post which was not in the control of the petitioner. It practically amounts to impliedly directing Vividha Transportation Pvt. Ltd, Jamnagar, to engage the respondent as a daily wager with 50 % back wages. Such direction is also contrary to law and illegal.

10. There is also no force in the plea that the daily wagers, junior to the respondent were continued to work and absorbed in alternative departments after privatization of the transport service and handing over the same to Vividha Transportation Pvt. Ltd., Jamnagar. Annexure "B" negative this contention that the junior daily wagers were continued and absorbed alternatively, but the respondent was not considered.

11. Learned counsel for the respondent contended that no appointment letter was given to the respondent nor dismissal order was given to him and as such the action of the petitioner is apparently mala fide. However, no mala fide can be upheld because it was not the case where the respondent, daily wager was dismissed, discharged or terminated from service. He was ceased to work because the work was not available with the petitioner. He was engaged as daily wager. He worked as conductor when the regular staff was not available for one reason or the

other.

12. Shri Mishra, learned counsel for the respondent has pointed out para 12 of the award and has contended that there are apparent contradictions in the calculation of number of days and this contradiction was rightly taken into account by the Labour Court. I do not find force in this contention. Even if there was slight contradiction in calculation of number of days on which the respondent worked, it is established from the record that the respondent did not work beyond twenty nine days and as such the so called contradiction could be of no-avail for directing reinstatement of the respondent. Even if the entire case of the respondent is believed that he worked from 1-1-88 to 16-7-88, for which there is no justification, even then this period does not work out to 240 days. As such there was no justification for directing reinstatement of the respondent to his original post. It may also be mentioned that a daily wager is not appointed to any substantive post and as such there could not be any valid order for reinstatement of the respondent to his original post. The daily wager has no right to post and this settled position was also overlooked by the Labour Court.

13. In view of the aforesaid discussions, it is clear that the order of reinstatement, passed by the Labour Court suffers from manifest errors of law and the error is also apparent on the face of the record as well as on the face of the award. The order of reinstatement, has therefore to be quashed. If the order of reinstatement is quashed, then the order of 50 % back wages also cannot be maintained.

14. The last contention of Shri Mishra was that in view of the verdict of the Apex Court in Ajaib Singh's case (Supra), he has no grievance if the order for back wages is refused. This contention also cannot be accepted. If the order for reinstatement cannot be maintained, there will be hardly any justification for dealing with the subsequent portion of the award granting 50 % back wages. If the order for reinstatement is quashed, no back wages can be granted to the respondent.

15. For the reasons above, the award is patently illegal hence, it has to be quashed. The writ petition, therefore, succeeds and is allowed . The award dated 9-12-97, Annexure "A" to the writ petition is hereby quashed. No order as to costs.

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